

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Lewis Jeffrey Eppolite  
SSN XXX-XX-1621  
Carol Janese Eppolite  
SSN XXX-XX-7094

**CASE NO. 03-35555 GFK**

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Principal Residential Mortgage, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 20, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than September 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 13, 2003. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$248,600.00, as evidenced by that certain Promissory Note dated December 20, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated December 20, 2001, executed by Lewis J. Eppolite and Carol J. Eppolite, husband and wife, recorded on January 3, 2002, as Document No. 369579, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Chisago County, Minnesota and is legally described as follows to-wit:

That part of the Southwest Quarter of the Northeast Quarter (SW 1/4 of NE 1/4) of Section Twenty-one (21), Township Thirty-four (34) North, Range Twenty-one (21) West, Chisago County, Minnesota, described as follows: Beginning at the Southwest corner of the Southwest Quarter of Northeast Quarter of Section 21; thence North 89 degrees 32 minutes East, assumed bearing along the South line of the Southwest Quarter of Northeast Quarter, a distance of 930 feet; thence North 40 degrees 16 minutes 10 seconds West, a distance of 989 feet, more or less, to the center line of County State Aid Highway No. 18; thence Southwesterly along said highway center line, a distance of 405 feet, more or less, to the West line of the Southwest Quarter of Northeast Quarter of Section 21; thence South 21 degrees 14 minutes 30 seconds East, along said West line, a distance of 499.2 feet, more or less, to the point of beginning, Chisago County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 3, 2004, Debtor is delinquent in the making of post-petition monthly payments for the months of May, 2004 through September, 2004, inclusive, in the amount of \$1,853.49 each; accruing late charges of \$185.34 and attorneys fees and costs of \$675.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 3rd day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

09/02/2003 11:07 FAX 515 235 0023

PRMI BKY DEPT

020/022

## NOTE

110  
1743559-5

DECEMBER 20TH, 2001

(Date)

FOREST LAKE,

(City)

MINNESOTA

(State)

6817 LENT TRAIL  
STACY, MN 55079

(Property Address)

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 248,600.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is  
BELL AMERICA MORTGAGE LLC DBA BELL MORTGAGE

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

## 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

## 3. PAYMENTS

## (A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on FEBRUARY 2002. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JANUARY 1ST, 2022, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1000 SHELARD PARKWAY, SUITE 500  
MINNEAPOLIS, MN 55426

or at a different place if required by the Note Holder.

## (B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1853.49

## 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

ENR -5N (000)01

Form 3200 1/01

VAR. MORTGAGE FORMS - (000)021-7201

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Initials: UE SE

EXHIBIT

A



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(B) "Borrower" is  
LEWIS J. EPPOLITE AND  
CAROL J. EPPOLITE, HUSBAND & WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is BELL AMERICA MORTGAGE LLC DBA BELL MORTGAGE

Lender is a LLC

organized and existing under the laws of MINNESOTA  
Lender's address is 1000 SHELARD PARKWAY, SUITE 500  
MINNEAPOLIS, MN 55426

(E) "Note" means the promissory note signed by Borrower and dated DECEMBER 20TH, 2001

The Note states that Borrower owes Lender

TWO HUNDRED FORTY EIGHT THOUSAND SIX HUNDRED AND NO/100 Dollars  
(U.S. \$ 248,600.00) plus interest. Borrower has promised to pay this debt in regular Periodic

Payments and to pay the debt in full not later than JANUARY 1ST, 2022

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider  |
| <input type="checkbox"/> Balloon Rider         | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider   |
| <input type="checkbox"/> VA Rider              | <input type="checkbox"/> Biweekly Payment Rider         | <input type="checkbox"/> Other(s) (specify) |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

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(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the  
COUNTY of CHISAGO

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]:

SEE ATTACHED EXHIBIT A

Parcel ID Number: 05-00338-00  
6817 LENT TRAIL  
STACY  
("Property Address");

which currently has the address of  
[Street]  
[City], Minnesota 55079 [Zip Code]

6A(MN) 100051.01

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Initials: *UE JE*

Form 3024 1/01

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**EXHIBIT A**

That part of the Southwest Quarter of the Northeast Quarter (SW  $\frac{1}{4}$  of NE  $\frac{1}{4}$ ) of Section Twenty-one (21), Township Thirty-four (34) North, Range Twenty-one (21) West, Chisago County, Minnesota, described as follows:

Beginning at the Southwest corner of the Southwest Quarter of Northeast Quarter of Section 21; thence North 89 degrees 32 minutes East, assumed bearing along the South line of the Southwest Quarter of Northeast Quarter, a distance of 930 feet; thence North 40 degrees 16 minutes 10 seconds West, a distance of 989 feet, more or less, to the center line of County State Aid Highway No. 18; thence Southwesterly along said highway center line, a distance of 405 feet, more or less, to the West line of the Southwest Quarter of Northeast Quarter of Section 21; thence South 21 degrees 14 minutes 30 seconds East, along said West line, a distance of 499.2 feet, more or less, to the point of beginning, Chisago County, Minnesota.

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File No.: 345190



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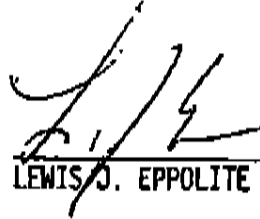
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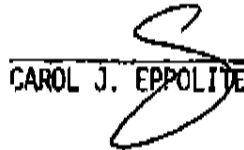
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

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Witnesses:

  
\_\_\_\_\_  
LEWIS J. EPPOLITE (Seal)  
-Borrower

  
\_\_\_\_\_  
CAROL J. EPPOLITE (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

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(Seal)  
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-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

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STATE OF MINNESOTA,

WASHINGTON

County ss:

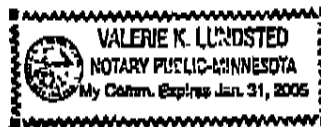
On this 20TH

day of DECEMBER, 2001

, before me appeared

36559  
 LEWIS J. EPPOLITE AND  
 CAROL J. EPPOLITE, HUSBAND & WIFE

to me personally known to be the person(s) described in and who executed the foregoing instrument and  
 acknowledged that he/she/they executed the same as his/her/their free act and deed.



*Valerie K. Lundstedt*  
 Notary Public  
 My Commission Expires:

This instrument was drafted by:  
 BELL AMERICA MORTGAGE LLC DBA BELL MORTGAGE  
 1000 SHELARD PARKWAY SUITE 500  
 MINNEAPOLIS, MN 55426

Tax statements for the real property described in this instrument should be sent to:  
 BELL MORTGAGE  
 1000 SHELARD PARKWAY SUITE 500  
 MINNEAPOLIS, MN 55426

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Lewis Jeffrey Eppolite  
SSN XXX-XX-1621  
Carol Janese Eppolite  
SSN XXX-XX-7094

**CASE NO. 03-35555 GFK**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 3, 2004, Debtor is delinquent for post-petition monthly payments for the months of May, 2004 through September, 2004, in the amount of \$1,853.49 each; accruing late charges of \$185.34 and attorneys fees and costs of \$675.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty. S.D.N.Y., 1986).

### **CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 3rd day of September, 2004.

### **WILFORD & GESKE**

By /s/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA  
ST. PAUL DIVISION**

**IN RE:**

**LEWIS JEFFERY EPPOLITE  
SSN XXX-XX-1621  
CAROL JANESE EPPOLITE  
SSN XXX-XX-7094**

**DEBTORS**

§  
§  
§  
§  
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§  
§  
§

**CASE NO. 03-35555-GFK**

**CHAPTER 13**

**AFFIDAVIT OF LINDSEY SCHILTZ**

Lindsey Schiltz, being duly sworn to oath, deposes and states:

1. That he/she is the custodian of records of Principal Residential Mortgage, Inc..

2. Principal Residential Mortgage, Inc. is now the holder and/or servicing agent of a mortgage on real property on which the Debtors have an interest. The Debtors' indebtedness is evidenced by that certain mortgage deed dated December 20, 2001, executed by Lewis J. Eppolite and Carol J. Eppolite. The property is located in Chisago County, Minnesota and is legally described as follows, to-wit:

SEE ATTACHED EXHIBIT A

3. That he/she has reviewed the account records relating to Eppolite mortgage loan, account no. xxxx5595.

4. That as of August 19, 2004, the following amounts were owing on this account:

Unpaid principal	\$	235,915.49
Interest from November 1, 2003 through August 17, 2004	\$	11,231.28
Attorney's Fees	\$	1,114.04
Late Charges	\$	112.67
Escrow Advance	\$	(2,123.56)
Other Charges	\$	0.00
Total	\$	246,269.92

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of May 2004, June 2004, July 2004, August 2004.

6. Principal Residential Mortgage, Inc. has had to obtain counsel to represent it in bringing this Motion and will incur additional legal expenses and attorney fees.

7. This affidavit is given in support of the Motion of Principal Residential Mortgage, Inc. for relief from the automatic stay.

The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct.

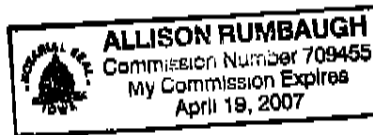
**Principal Residential Mortgage, Inc.**

By Lindsey Schiltz  
Lindsey Schiltz  
Bankruptcy Representative.

DATED: 8/25/04

SUBSCRIBED AND SWORN TO BEFORE ME on 8/25, 2004.

Allison Rumbaugh  
Notary Public in and for the State of la.



8302-N-0672

minn

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Lewis Jeffrey Eppolite  
SSN XXX-XX-1621  
Carol Janese Eppolite  
SSN XXX-XX-7094

**CHAPTER 13 CASE**

**CASE NO. 03-35555 GFK**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 3, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Lindsey Schiltz, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Lewis J. Eppolite  
Carol J. Eppolite  
6817 Lent Trail  
Stacy, MN 55079

Jasmine Z. Keller  
12 S 6<sup>th</sup> St Ste 310  
Minneapolis, MN 55402

Curtis K. Walker  
4356 Nicollet Ave S  
Minneapolis, MN 55409

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 3rd day of September, 2004.

/s/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Lewis Jeffrey Eppolite  
SSN XXX-XX-1621  
Carol Janese Eppolite  
SSN XXX-XX-7094

**CHAPTER 13 CASE**

**CASE NO. 03-35555 GFK**

Debtor.

**ORDER**

The above entitled matter came on for hearing upon motion of Principal Residential Mortgage, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 20, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated December 20, 2001, executed by Lewis J. Eppolite and Carol J. Eppolite, husband and wife, recorded on January 3, 2002, as Document No. 369579 covering real estate located in Chisago County, Minnesota, legally described as follows, to-wit:

That part of the Southwest Quarter of the Northeast Quarter (SW 1/4 of NE 1/4) of Section Twenty-one (21), Township Thirty-four (34) North, Range Twenty-one (21) West, Chisago County, Minnesota, described as follows: Beginning at the Southwest corner of the Southwest Quarter of Northeast Quarter of Section 21; thence North 89 degrees 32 minutes East, assumed bearing along the South line of the Southwest Quarter of Northeast Quarter, a distance of 930 feet; thence North 40 degrees 16 minutes 10 seconds West, a distance of 989 feet, more or less, to the center line of County State Aid Highway No. 18; thence Southwesterly along said highway center line, a distance of 405 feet, more or less, to the West line of the Southwest Quarter of Northeast Quarter of Section 21; thence South 21 degrees 14 minutes 30 seconds East, along said West line, a distance of 499.2 feet, more or less, to the point of beginning, Chisago County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court